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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,638	12/29/2003	Ramses Nashed		2854

7590 12/17/2004
Edward P. Dutkiewicz
640 Douglas Road
Dunedin, FL 34698

EXAMINER

RAGONESE, ANDREA M

ART UNIT	PAPER NUMBER
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3743

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/747,638	Applicant(s) NASHED, RAMSES	
	Examiner Andrea M. Ragonese	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 6 is/are allowed.
- 6) ☒ Claim(s) 2-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3743

DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Drawings

2. The drawings are objected to under 37 CFR 1.84(r) due to the use of improper reference character notation. Lead lines are required for each reference character. For example, element **106** is missing the lead line that corresponds to the element which it represents. Corrected drawing sheets are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The

Art Unit: 3743

replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures.

3. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

5. The abstract of the disclosure is objected to because of the use of improper sentence structure. The abstract should only contain complete sentences, not run-on sentences as it currently does. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. **Claims 3-5** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding **claims 3-4**, it is unclear whether or not Applicant is claiming a second face mask since the metes and bounds of "a face mask"

Art Unit: 3743

were already set forth in **claim 2**, the independent claim, and in **claims 3-4**, the recitation of "the system *further comprising: a face mask*", sets forth a system that has another face mask, in addition to the one already claimed in **claim 2**. Similarly, regarding **claim 5**, it is unclear whether or not Applicant is claiming a second set of face mask features (an inflow flapper valve, a fresh-gas inflow tube, an exhaust-gas outflow tube and a gas sampling tube) since the metes and bounds of "a face mask" were already set forth in **claim 2**, the independent claim, and in **claim 5**, the recitation of "the dome portion *having...*", sets forth a system that has another set of face mask features, in addition to the one already claimed in **claim 2**.

8. Any rejections in this Office action have been made by applying any pertinent prior art in the field to the merits of the claimed invention as best understood by the Examiner.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3743

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claims 2, 3 and 5** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickie et al. (US 5,676,133) in view of Wright (US 2,222,971). Hickie et al. discloses a gas scavenging apparatus comprising all the limitations recited in **claims 2, 3 and 5**, with the exception of a face mask with a flapper valve and a strap. However, the use of flapper valve to bring in fresh ambient air and a strap to secure the mask to the patient's head was known at the time the invention was made. Specifically, Wright teaches the use of "a one-way valve which freely opens during inhalation to permit the fresh outside air to be drawn...into the mouth compartment" and "a plurality of flexible adjusting straps 2 for fitting the face-piece to the user." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hickie et al. by adding a fresh air flapper valve to allow ambient air from the atmosphere into the mask as well as straps to secure to the user's face because it is well known in the art, as taught by Wright, to use a flapper valve in order to only let fresh air into the mask and mask straps in order to securely seal the mask to the user's face without allowing any respiratory gases escape to the surrounding environment before they are able to be recycled to the patient (and to prevent any doctors, nurses or visitors in the room from ingesting the anesthetic gases).

Art Unit: 3743

12. **Claims 2 and 4** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hickie et al. (US 5,676,133) in view of Macris et al. (US 4,989,596). Hickie et al. discloses a gas scavenging apparatus comprising all the limitations recited in **claims 2 and 4**, with the exception of a face mask with a flapper valve. However, the use of flapper valve to bring in fresh ambient air was known at the time the invention was made. Specifically, Macris et al. teaches the use of "a pair of intake valves **51**...[that] serve to allow atmospheric air to enter the face chamber...[wherein] intake valve **51** [includes] a resilient flap **52** mounted on the inside of the sidewall **25** with a plurality of intake holes **54**...[for allowing] air to enter face chamber **12** from the atmosphere but precludes the passage of gas from the pressure chamber **12** to the atmosphere." Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Hickie et al. by adding a fresh air flapper valve to allow ambient air from the atmosphere into the mask because it is well known in the art, as taught by Macris et al., to use a flapper valve in order to only let fresh air into the mask without allowing any respiratory gases escape to the surrounding environment before they are able to be recycled to the patient (and to prevent any doctors, nurses or visitors in the room from ingesting the anesthetic gases).

Allowable Subject Matter

13. **Claims 1 and 6** are allowed.


Art Unit: 3743

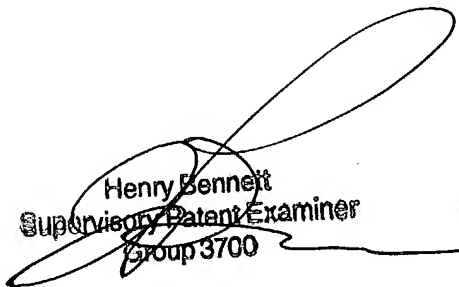
Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Andrea M. Ragonese** whose telephone number is **571-272-4804**. The examiner can normally be reached on Monday through Friday from 8:30 am until 5:00 pm.

15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AMR 
December 13, 2004


Henry Bennett
Supervisory Patent Examiner
Group 3700